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Janko Budzisch

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EXAMINER

ORR, HENRY W

ART UNIT

PAPER NUMBER

2176

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/749,769

Applicant(s)

BUDZISCH ET AL.

Examiner

Henry Orr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/21/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is responsive to applicant's amendment dated 4/21/2008.
2. Claims 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 are pending in the case.
3. Claims 4, 9, 14, 19, 24, 29, 31-49 are cancelled.
4. Claims 1, 11 and 21 are independent claims.

Applicant's Response

5. In Applicant's response dated 4/21/2008, applicant has amended the following:
 - a) Claims 1, 11 and 21

Information Disclosure Statement

6. The information disclosure statement (IDS) submitted on 4/21/2008 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner is considering the information disclosure statement.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. **Claims 11-13, 15-18, 20-23, 25-28 and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The**

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language of the claims raises a question as to whether the claims are directed merely to abstract ideas that are not tied to a technological art, environment, or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101. See MPEP § 2106

Claim 11:

Claim 11, recite a **“article of manufacture”** comprises ONLY a medium “medium” that may be a signal or carrier as disclosed in the specification (see p. 44 par. 109). Claiming a signal per se is considered non-statutory subject matter because a signal is a form of energy. Thus, the recited **“article of manufacture”** is comprised merely of carrier wave signals and is not a process, a machine, a manufacture or a composition of matter.

Accordingly, the claim fails to recite statutory subject matter as defined in 35 U.S.C. § 101.

Claims 12, 13, 15-18 and 20:

Dependent claims 12, 13, 15-18 and 20 are rejected for fully incorporating the deficiencies of base claim 11.

Claim 21:

Claim 21, recite a **“system”** comprises ONLY a medium “medium” that may be a signal or carrier as disclosed in the specification (see p. 44 par. 109). Claiming a

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signal per se is considered non-statutory subject matter because a signal is a form of energy. Thus, the recited “**system**” is comprised merely of carrier wave signals and is not a process, a machine, a manufacture or a composition of matter.

Accordingly, the claim fails to recite statutory subject matter as defined in 35 U.S.C. § 101.

Claims 22, 23, 25-28 and 30:

Dependent claims 22, 23, 25-28 and 30 are rejected for fully incorporating the deficiencies of base claim 21.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

10. Claims 1, 11 and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by Saylor et al. (hereinafter “Saylor”), U.S. Patent No 2002/0186238 A1.

Claim 1:

Saylor teaches **a method, comprising reading program code from memory and processing said program code with a machine to perform the following method: displaying a tree on a graphical user interface,** (see abstract, par. 23, par. 25)

said tree comprising: a first node that identifies a testing scenario for an object oriented business logic process; (see par. 51, par. 63, Figure 5A– testing resources (i.e., nodes) of a business process)

a plurality of sub nodes of said first node, each of said plurality sub nodes identifying a different object oriented software component of said business logic process (see par. 51, par. 64– resources may represent different applications)

each of said plurality of sub nodes capable of spawning its own sub tree (see par. 11, par. 146, Figure 9B)

that includes a node that identifies a computing system within which an instance of its sub node's corresponding software component is instantiated; (see par. 64-65, par. 141, Figure 5A– resources identifying roles within a system)

an availability node that indicates said instance is unavailable when said instance is unavailable (see par. 97 – failure status is interpreted to mean the resource is unavailable)

said indication that said instance is unavailable being made with a color that is different than another color used to indicate said instance is available when said instance is available; (see par. 135 – severity can be reflected using different colors)

a heart beat node that displays text contained in a message received from a network, said message pertaining to said instance and part of said testing scenario; (see par. 97, par. 141-144 – e.g. mouse over resource to display message “11 alarms over the last 30 minutes”)

displaying a feature on said graphical user interface apart from said tree, said feature showing non working testing scenarios for other business logic processes.) (see par. 3, par. 95-97, par. 146 –drilldown items in a separate window displaying failed network resources of business process)

Claim 11:

Claim 11 includes a program embodied on a computer readable medium to implement the steps that are substantially encompassed in method claim 1; therefore the claim is rejected under the same rationale as method claim 1 above.

Claim 21:

Claim 21 is a system claim and is substantially encompassed in method claim 1; therefore the system claim is rejected under the same rationale as method claim 1 above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2, 3, 5-8, 10, 12, 13, 15-18, 20, 22, 23, 25-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saylor as cited above, in view of Oliver et al. (hereinafter "Oliver"), U.S. Published Application No. 2003/0225876.

Claims 2 and 3:

Saylor fails to expressly teach availability as a percentage over a fixed time interval.

However, Oliver teaches *"network elements may be monitored by, for example, polling them in five minute intervals", "polling operation may be configured to retrieve from the monitored network elements performance metrics" (i.e., application availability) (see par. 22) and "a different color is assigned to each performance level between 0% and 100% in increments of 10" (see par. 26).* **(claim 2; i.e., wherein said availability node indicates availability as a percentage.) (claim 3; i.e., wherein said percentage is calculated over a fixed time interval.)**

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the performance reports as taught by Saylor to include an indicate the availability of a monitored resource as a percentage over a fixed time interval as taught by Oliver to provide the benefit of allowing users to more easily analyze and monitor the availability of a resource (see Saylor; par. 154) (see Oliver; abstract, par. 22, par. 26).

Claim 5:

Sylor teaches **wherein said message was sent over a network within an IS infrastructure from a location where said one or more software components were tested for availability.** (see par. 51, par. 200)

Claim 6:

Sylor fails to expressly teach a message comprising of an XML document.

However, Oliver teaches *"In step 715, the performance metrics are translated according to a schema prior to transmission over the performance message queue. The translation may be made according to any convenient schema. According to one embodiment of the present invention, the translation is made into an XML format. Subsequently in step 720, the polling agent publishes the performance metrics as XML messages over the performance queue. The performance messages are read by the performance monitor and the archive 205 which stores the performance metric data in an archival format as previously described"* (see par. 53). **(claim 6; i.e., wherein said message further comprised an .XML document.)** Examiner interprets the performance message to be compatible with a XML document because the performance metrics inside the performance message are translated into XML format.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ASCII file as taught by Sylor to include performance metrics translated in XML format (i.e., creating an XML document) as taught by Oliver to provide the benefit of having a known format and structure that easily permits the extraction of network element identifiers and associated performance metrics to be

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periodically published over a network message queue to users monitoring and measuring the availability of network resources (see Saylor; par. 200) (Oliver; par. 7, par. 24).

Claim 7:

Saylor teaches **wherein said message further included an indication that the particular software component instance to which said text is presented in reference to is unavailable.** (see par. 95-97, par. 141-144)

Claim 8:

Saylor teaches wherein said text is presented in the color red. (see par. 135)

Claim 10:

Saylor teaches **wherein said feature is a second tree.** (see par. 146)

Examiner interprets the "drill down" display within the separate window display to be a tree because a user can "drill down" to different hierarchal levels.

Claims 12, 13, 15-18 and 20:

Claims 12, 13, 15, 16, 17, 18 and 20 include a program embodied on a computer readable medium to implement the steps that are substantially encompassed in method claims 2, 3, 5, 6, 7, 8 and 10 respectively; therefore the claims are rejected under the same rationale as method claims 2, 3, 5, 6, 7, 8 and 10 above.

Claims 22, 23, 25-28 and 30:

Claims 22, 23, 25, 26, 27, 28 and 30 are system claims and are substantially encompassed in method claims 2, 3, 5, 6, 7, 8 and 10 respectively; therefore the system claims are rejected under the same rationale as method claims 2, 3, 5, 6, 7, 8 and 10 above.

Response to Arguments

Applicant's arguments with respect to claims 1-3, 5-8, 10-13, 15-18, 20-23, 25-28 and 30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry Orr whose telephone number is (571) 270 1308. The examiner can normally be reached on Monday thru Friday 8 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached on (571) 272-4137. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

7/30/2008
HO

/Rachna S Desai/
Primary Examiner, Art Unit 2176